No. 96-756

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

LAURIE ISAAC BROAD, for himself and all others who are similarly situated,

Petitioners,

vs.

SEALASKA CORPORATION, SEALASKA ELDERS' SETTLEMENT TRUST, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Did the United States District Court for the District of Alaska have federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(a)?

2. Does the preemption analysis applied by the United States Court of Appeals for the Ninth Circuit with respect to the preemption of Alaska Stat. § 10.06.305(b) by provisions of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1629e, conflict with preemption analysis applied by other circuit courts?

3. Did the United States Court of Appeals for the Ninth Circuit err by holding that the Alaska Native Claims Settlement Act, 43 U.S.C. § 1629e, preempts Alaska Stat. § 10.06.305(b)?

LIST OF INTERESTED PARTIES*

Petitioners	Respondents
Laurie Isaac Broad	Sealaska Corporation
Marsha Simonds	Sealaska Elders'
Julie Wigg	Settlement Trust
Larry Taylor, Jr.	Patrick Anderson
Marc Simpson	Charles Carlson
Rebecca Simpson	Joseph Demmert, Jr.
Alora J. Winchester	L. Embert Demmert**
Emily Gotardo	Raymond Demmert
Barbara Crabtree	Jim Edenso
Angie Doak	Clarence Jackson, Sr.
Royann Churchill	Marlene A. Johnson
Leonard Valezquez	Albert Kookesh**
Arlene Bell Hanson	Ethel Lund
Victor Carl Davis, Jr.	Carlton Smith
Joyce Lewis***	Richard Stitt, Sr.
Clinton Lewis***	Ralph Strong
	Alan Williams
	Rosita Worl
	Marjorie Young

Each of the respondents joins in this brief of opposition.

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* Pursuant to United States Supreme Court Rule 29.6, the petitioners state that Sealaska Corporation has no parent company and has no nonwholly-owned subsidiary.

** These names, which appear in the list filed with the Petition, are listed here with their correct spellings.

*** These names appear in the petitioners' amended complaint and do not appear in the list filed with the Petition.

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APPENDIX

Appendix A — Relevant Statutes, Act of February 3, 1988, Pub. L. 100-241, §§ 2, 101 Stat. 1813, 43 U.S.C. §§ 1606(h)(1)(A), 1629b(a), 1629e, Alaska Stat. §§ 10.06.305(b), 10.06.960(f) 1a

Appendix B — Verified Notice of Removal Filed October 28, 1992 with Attached Summons and Complaint .. 12a

Appendix C — Amended Complaint Filed October 30, 1992 ..... 22a

Respondents request that the Court deny the petition for writ of certiorari seeking review of an opinion of the United States Court of Appeals for the Ninth Circuit. The court of appeals opinion is reported at 85 F.3d 422 (9th Cir. 1996), *petition for cert. filed*, 65 U.S.L.W. 3381 (U.S. November 8, 1996) (No. 96-756). (For the convenience of the Court, all citations to the Ninth Circuit opinion will be to the opinion attached in the Appendix to the petition, pages 1 through 29).

STATEMENT OF JURISDICTION

The jurisdiction of this Court to grant certiorari for review of the decision of the Ninth Circuit Court of Appeals is conferred by 28 U.S.C. § 1254(1). Original and removal jurisdiction of the United States District Court for the District of Alaska is discussed below in Point I of this Brief in Opposition.

STATUTES INVOLVED

The statutory provisions involved in this case are portions of the Alaska Native Claims Settlement Act, found at 43 U.S.C. §§ 1601-1629f, and the Alaska state corporations code, Alaska Stat. § 10.06. The specific provisions involved are: 43 U.S.C. §§ 1606(h)(1)(A), 1629b(a), 1629e; Pub. L. No. 100-241, § 2, 101 Stat. 1788 (1988); Alaska Stat. § 10.06.305(b); and Alaska Stat. § 10.06.960(f). The texts of these statutes are attached in Appendix A.

STATEMENT OF THE CASE

Sealaska Corporation ("Sealaska") is the Alaska Native regional corporation for Southeast Alaska, established in 1971 pursuant to the Alaska Native Claims Settlement Act ("ANCSA"), 43 U.S.C. §§ 1601-1629e. Sealaska's 16,000 shareholders are predominantly Alaska Natives of Tlingit, Haida,

and Tsimshian descent. Pursuant to ANCSA, shareholders received 100 shares each of Sealaska stock.

In 1987,[1] Congress substantially amended ANCSA "to enable the shareholders of each Native Corporation to structure the further implementation of the settlement in light of their particular circumstances and needs." Pub. L. No. 100-241, § 2(5), 101 Stat. 1788 (1988); 43 U.S.C. § 1601 note (Supp. 1996) (Congressional Findings and Declaration of Policy for ANCSA Amendments of 1987). One of the 1987 amendments added 43 U.S.C. § 1629e, which permits any Native corporation to convey assets into a "settlement trust" to be used "to promote the health, education, and welfare of its beneficiaries and preserve the heritage and culture of Natives." 43 U.S.C. § 1629e(b)(1).

Elders occupy a special position of honor, respect, and great affection in traditional Tlingit, Haida, and Tsimshian culture. Sealaska had long sought means to assist and give special recognition to its elder shareholders, and the settlement trust option in 43 U.S.C. § 1629e finally made it possible for Sealaska to do this. In 1991, Sealaska's board of directors presented a resolution to a vote of the shareholders to establish the Elders' Settlement Trust ("Trust"). The Trust would be funded with corporate assets, and would distribute a one-time financial benefit of $20 per share to each shareholder upon reaching age 65. (Op. at 3-4.) The resolution passed with the affirmative vote of 73.7 percent of all shares voting on the issue, or 50.7 percent of all outstanding shares. Starting on December 10, 1991, and continuing thereafter as shareholders have reached age 65, the Trust has paid them $20 per share according to the terms of the resolution. (Op. at 4.)

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1. The amendments were referred to in Congress, and are referred to herein, as the 1987 amendments; in fact, they were enacted on February 3, 1988.

A. Course of Proceedings and Disposition of the Case Below.

In September 1992, the petitioners filed a purported class action lawsuit in the Alaska Superior Court claiming that the payments made by the Trust were illegal "constructive dividends." The petitioners asserted that the payments were illegal distributions because they discriminated between Sealaska shares of the same class. The complaint was cursory; it cited no state statute and did not mention the Alaska corporations code or common law. But the complaint did describe Sealaska as a corporation organized under ANCSA and the creator of the Trust.

The respondents removed the case to the United States District Court for the District of Alaska as presenting claims arising under federal law for which the district court had original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(a) and (b).[2] The petitioners never moved for remand back to the state court, and did not otherwise indicate that they believed their claim was predicated solely upon Alaska law.

No trial or other evidentiary hearing of the petitioners' claim ever took place. On cross-motions for summary judgment, the district court entered several orders that, together, denied the petitioner's motion and granted the respondents summary judgment on all issues. The Ninth Circuit Court of Appeals affirmed, holding, *inter alia*, that ANCSA, 43 U.S.C. § 1629e, explicitly preempts state law with respect to corporate resolutions that establish settlement trusts and, with respect to settlement trust distributions, implicitly preempts Alaska Stat. § 10.06.305(b), which requires corporations to give equal treatment to all shares of the same class and prohibits discriminatory distributions.

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2. A copy of the respondents' verified notice of removal, together with the summons and complaint, is attached as Appendix B.

B. Correction of Misstatements in the Petition.

Pursuant to United States Supreme Court Rule 15.2, the respondents bring to the Court's attention the following misstatements of fact contained in the petition.

The petition states that "[t]he complaint alleged Sealaska had breached its shareholder contract by paying dividends in violation of Alaska corporations statutes and in violation of the Alaska common law of corporations." (Petition at 17.) The petition also states that Sealaska "removed this case on the reasoning that the federal statute had preempted the corporations law of Alaska." (*Id.*) Contrary to the petitioners' representations, the complaint did not even mention, much less cite, any provision in the Alaska corporations code, nor did it refer to the Alaska common law of corporations. (*See* Complaint, Appendix B.) The petitioners' representation that Sealaska removed the case to the federal district court "on the reasoning" that Alaska's corporations law was preempted by ANCSA is likewise incorrect. The respondents removed the case to the federal district court because the complaint presented claims arising under federal law, namely ANCSA, 43 U.S.C. § 1629e, for which that court had federal question jurisdiction under 28 U.S.C. § 1331. (*See* Notice, Appendix B.)

Even the petitioners' amended complaint, filed after removal, did not mention the Alaska corporations code or Alaska common law.[3] A copy of the amended complaint is attached hereto as Appendix C.

Moreover, in their petition for certiorari, the petitioners

3. The amended complaint did cite, erroneously, a portion of the Alaska probate code, Alaska Stat. §§ 13.16.005-.300, with respect to registration of the Trust. The statutes that address registration of trusts are found at Alaska Stat. §§ 13.36.005-.025.

designate as the statutes "principally" implicated in this case only ANCSA (43 U.S.C. §§ 1606(h)(1)(A), 1629e) and Alaska Stat. § 10.06.960(f) (the state corporations code provision by which the code expressly yields to ANCSA on all matters related to Native corporations to the extent that ANCSA is inconsistent with the state law). The petitioners do not mention Alaska Stat. § 10.06.305(b), the state corporations code section that they allege is violated by the Trust. (Petition at 3.)

REASONS FOR DENYING THE WRIT

I.

REMOVAL OF THIS ACTION TO FEDERAL COURT WAS PROPER.

The petitioners challenge jurisdiction of the federal courts for the first time here. While jurisdiction may be considered at any time, *Louisville & N. R. v. Mottley*, 211 U.S. 149, 152 (1908), the petitioners effectively seek to amend their complaint to raise strictly state law claims, avoid federal jurisdiction, and gain an opportunity to obtain a result from the state courts on federal law issues that the federal courts have refused to give. Yet the petitioners concede that portions of ANCSA comprise "the statutes *principally* involved in this case." (Petition at 3 (emphasis added).)

The petitioners' reliance on *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987), and the "well-pleaded complaint" rule is unavailing. First, a federal question is presented on the face of the petitioners' complaint, and the federal issue did not arise solely in anticipation of a defense. The complaint showed no exclusive reliance on state law. Second, even if the complaint could be fairly construed to have alleged a state cause of action under the Alaska corporations code, vindication of the state law

right depended completely upon resolution of an issue of federal law, making the claim one "arising under" federal law. Third, the preemptive force of the federal law at issue, 43 U.S.C. § 1629e, is so powerful that it displaces entirely any state cause of action for discrimination against certain shareholders by the Trust.

43 U.S.C. § 1331 grants the district courts original jurisdiction over claims "arising under the Constitution, laws, or treaties of the United States." 43 U.S.C. § 1441(b) permits removal on the basis of federal question jurisdiction without regard to the citizenship of the parties. As this Court observed in *Franchise Tax Bd. v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 8 (1983):

> [T]he statutory phrase "arising under the Constitution, laws, or treaties of the United States" has resisted all attempts to frame a single, precise definition for determining which cases fall within, and which cases fall outside, the original jurisdiction of the district courts. Especially when considered in light of § 1441's removal jurisdiction, the phrase "arising under" masks a welter of issues regarding the interrelation of federal and state authority and the proper management of the federal judicial system.

Justice Holmes defined "arising under" simply: "A suit arises under the law that creates the cause of action." *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916). Justice Holmes' test is a principle of inclusion rather than exclusion. *Franchise Tax Bd.*, 463 U.S. at 9. The "vast majority" of cases that come within section 1331's grant of jurisdiction are covered by Justice Holmes' statement — that is, cases in

which federal law creates the cause of action. *Id.* at 8-9. However, this Court has also noted that a case may arise under federal law "where vindication of a right under state law necessarily turned on some construction of federal law," or where a purportedly state claim "is 'really' one of federal law." *Id.* at 9, 13. *See also Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 808-09 (1986) (a claim arises under federal law when vindication of a state law right depends upon resolution of a substantial question of federal law); *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 199 (1921) (same holding, over Justice Holmes' dissent).

The actual holding in *Franchise Tax Bd.* (a federal court is without jurisdiction to determine whether a state may collect unpaid taxes by imposing a levy on an ERISA plan) "demonstrates that this statement must be read with caution." *Merrell Dow Pharmaceuticals*, 478 U.S. at 809. Indeed, the powerful "well-pleaded complaint" doctrine "severely limits the number of cases in which state law 'creates the cause of action' that may be initiated in or removed to federal district court." *Franchise Tax Bd.*, 463 U.S. at 9. This Court has repeatedly stressed that "the party who brings a suit is master to decide what law he will rely upon." *Id.* at 22 (*quoting The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913)). *See also Caterpillar*, 482 U.S. at 392; *Merrell Dow Pharmaceuticals*, 478 U.S. at 809 n.6.

Nevertheless, the petitioners' complaint clearly disclosed that the claim would stand or fall in accordance with resolution of a substantial federal law question in dispute between the parties. The petitioners actually confirm this point when they state:

> The statutes *principally* involved in this case are parts of the Alaska Native Claims

> Settlement Act [ANCSA]: ANCSA § 7(h)(1)(A) [43 U.S.C. § 1606(h)(1)(A)] Settlement Stock of Regional Corporation; *and* ANCSA § 39 [43 U.S.C. § 1629e] — Settlement Trust Option.

(Petition at 3 (first emphasis added).)

Although the complaint stated its cause of action with a paucity of words, it was obvious that the object of the action was a settlement trust established by an Alaska Native corporation as authorized by ANCSA. It was therefore obvious that a construction of the federal law governing settlement trusts, 43 U.S.C. § 1629e, would be essential to resolution of the petitioners' claim that the Trust unlawfully discriminated against certain Sealaska shareholders.

Even assuming, for the sake of argument, that the complaint stated a cause of action created by Alaska corporations law, vindication of the state right "necessarily turned on" the construction of 43 U.S.C. § 1629e. *Franchise Tax Bd.*, 463 U.S. at 9. Thus, a federal question was presented and jurisdiction was conferred on the district court. *Id.*

Moreover, "it is an independent corollary of the well-pleaded complaint rule that a plaintiff may not defeat removal by omitting to plead *necessary* federal questions in a complaint." *Franchise Tax Bd.*, 463 U.S. at 22 (emphasis added) (*citing Avco Corp. v. Aero Lodge No. 735, Intern. Ass'n of Machinists and Aerospace Workers*, 376 F.2d 337, 339-40 (6th Cir. 1967), *aff'd*, 390 U.S. 557, 559 (1968)).

Finally, this Court has on occasion "concluded that the preemptive force of a statute is so 'extraordinary' that it 'converts an ordinary state common-law complaint into one stating a

federal claim for purposes of the well-pleaded complaint rule.' " *Caterpillar*, 482 U.S. at 393 (*quoting Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 65 (1987)). *See also Franchise Tax Bd.*, 463 U.S. at 24; *Oneida Indian Nation of New York State v. Oneida County*, 414 U.S. 661, 677 (1974) (state law complaint that alleged a present right to possession of Indian tribal lands necessarily "asserts a present right to possession under federal law," and is thus completely preempted and arises under federal law); *Avco Corp. v. Aero Lodge No. 735, Intern. Ass'n of Machinists and Aerospace Workers*, 390 U.S. 557, 559 (1968) (finding complete preemption of state law by the Labor Management Relations Act so that when "[t]he heart of the [state law] complaint [is] a . . . clause in the collective bargaining agreement," the complaint arises under federal law).

The settlement trust option, 43 U.S.C. § 1629e, lies at "the heart" of the petitioners' complaint. As explained in part III-B of this Brief in Opposition, the settlement trust statute so forcefully preempts contrary state law as to entirely displace any state cause of action challenging the creation, purposes, and characteristics of the Trust.

The petitioners' suit was properly removed to the federal district court.

II.

THE NINTH CIRCUIT'S DECISION DOES NOT CONFLICT WITH DECISIONS OF THE OTHER CIRCUITS ON THE SAME MATTER.

The petitioners attempt to persuade this Court to grant certiorari based on a supposed split among the circuits that this case could mend. On the contrary, as the petitioners' case law discloses, the circuit courts are not split on basic preemption

analysis. The petitioners have demonstrated only that the circuits have disagreed over the application of preemption to some specific statutes, such as the Medical Device Amendments to the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 360(a), that are unrelated to this case.[4]

Circuit disharmony over the construction of an unrelated statute does not amount to a conflict among the circuits on the matter of concern in this case. Resolving a conflict over the preemptive effect of other statutes will not resolve the controversy here. No other court — state or federal — has considered the preemptive effect of ANCSA's settlement trust provisions. Moreover, if the petitioners and dissenting Judge Kleinfeld are correct that "there is no basis for a preemption analysis" here, (Petition at 15), then the circuit conflict that the petitioners write of is not relevant to consideration of this case.

The lower courts do not "need instruction on . . . when they may resort to preemption analysis and when they may not," or "when they may rely upon broad statutory language . . . to find a preemption," (*id.* at 15), as the petitioners contend. Nor would such instruction be helpful. Preemption analysis is an "exercise of statutory construction," beginning with the text of the statute in question and turning upon congressional intent. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 115 S. Ct. 1671, 1677 (1995). The specifics of the relationship between the relevant statutory provisions within the preemption framework is unique in each case. The nature of the problem of discovering congressional intent has necessarily resulted in judicial ad hoc balancing. While the significant criteria may be articulated, as discussed below, it is difficult to apply the rationale underlying a decision in one field to the

4. The Alaska Native Claims Settlement Act relates only to Alaska Natives; therefore, of all the federal circuit courts, only the Ninth Circuit could host a lawsuit arising under ANCSA.

problem in another context. As Justice Black cautioned in *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941):

> But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula.

See also English v. General Electric Co., 496 U.S. 72, 79 n.5 (1990) (the categories of preemption are not "rigidly distinct"; for example, field preemption may be viewed as a form of conflict preemption).

Certiorari would be justified here only if the Ninth Circuit had entered its decision in conflict with the rulings of this Court, (United States Supreme Court Rule 10(c)), and it has not done so.

III.

THE NINTH CIRCUIT'S HOLDING IS IN ACCORD WITH THE DECISIONS OF THIS COURT. THE ANCSA SETTLEMENT TRUST OPTION PREEMPTS ALASKA LAW.

A. The Ninth Circuit Applied Correct Preemption Criteria.

The United States Constitution and the laws of the United States are the supreme law of the land. U.S. Const. art. VI. "Where a state [law] conflicts with or frustrates federal law, the former must give way." *CSX Transp., Inc. v. Easterwood*, 506 U.S. 658, 663 (1993). *See also Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604 (1991) (laws that "interfere with, or are contrary to the laws of Congress, made in pursuance of

the constitution" are invalid). Federal preemption of state laws "may be either express or implied, and is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *FMC Corp. v. Holliday*, 498 U.S. 52, 56-57 (1990) (*quoting Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95 (1983)) (*quoting Fidelity Federal Savings & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 152-53 (1982)) (in turn quoting *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977)).

This Court recently summarized basic preemption analysis in *Barnett Bank of Marion County, N.A. v. Nelson*, 116 S. Ct. 1103 (1996):

> This question is basically one of congressional intent. Did Congress, in enacting the federal statute, intend to exercise its constitutionally delegated authority to set aside the laws of a state? If so, the Supremacy Clause requires courts to follow federal, not state, law. Sometimes courts, when facing the preemption question, find language in the federal statute that reveals an explicit congressional intent to preempt state law. More often, explicit preemption language does not appear, or does not directly answer the question. In that event, courts must consider whether the federal statute's "structure and purpose," or nonspecific statutory language, nonetheless reveal a clear, but implicit, preemptive intent. A federal statute, for example, may create a scheme of federal regulation "so pervasive as to make reasonable the inference that Congress left no room for the states to

> supplement it." Alternatively, federal law may be in "irreconcilable conflict" with state law. Compliance with both statutes, for example, may be a "physical impossibility"; or, the state law may "stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Id. at 1108 (citations omitted).

The petitioners argue that whenever Congress includes an express preemption clause in a statute, courts "ought to limit themselves to the preemptive reach of that provision without essaying any further analysis under the various theories of implied preemption." (Petition at 10 (*quoting Greenwood Trust Co. v. Commonwealth*, 971 F.2d 818, 823 (1st Cir. 1992).) However, this Court rejected the same argument in *Freightliner Corp. v. Myrick*, 115 S. Ct. 1483 (1995), declining to adopt "a categorical rule precluding the coexistence of express and implied preemption" in a statute. *Id.* at 1487-88 (discussing *Cipollone v. Liggett Group Inc.*, 505 U.S. 504, 517 (1992)). A statute's express preemption clause "supports a reasonable inference that Congress did not intend to preempt other matters," but does not "entirely [foreclose] any possibility of implied preemption." *Freightliner*, 115 S. Ct. at 1488.

The petitioners urge this Court to instruct the lower courts that they must rest preemption on "the narrowest grounds possible." (Petition at 12). This Court has already instructed, repeatedly, that "state law is displaced only to the extent that it actually conflicts with federal law," and that "a federal court should not extend its invalidation of a statute further than necessary to dispose of the case before it." *Dalton v. Little Rock Family Planning Services*, 116 S. Ct. 1063, 1064 (1996) (*quoting Pacific Gas and Electric Co. v. State Energy Resources*

Conservation & Development Comm'n, 461 U.S. 190, 204 (1983), and *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 502 (1985)).

The Ninth Circuit's opinion honors the principles of preemption analysis prescribed by this Court. The court found that ANCSA "explicitly preempted state law with respect to corporate resolutions that establish settlement trusts,"[5] but that

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5. In setting out the procedures for considering amendments and resolutions authorized by the 1987 Amendments, Congress provided:

> (a) Coverage
>
> *Notwithstanding any provision* of the articles of incorporation and bylaws of a Native Corporation or *of the laws of the State*, except those related to proxy statements and solicitations that are not inconsistent with this section —
>
> . . . .
>
> (3) a resolution to establish a Settlement Trust;
>
> . . .
>
> . . . .
>
> shall be considered in accordance with the provisions of this section.

43 U.S.C. § 1629b(a) (emphasis added).

The provision authorizing ANCSA corporations to establish settlement trusts also states:

> A Native Corporation may convey assets (including stock or beneficial interests therein) to a Settlement Trust in accordance with the laws of the State (*except*

(Cont'd)

the relevant inquiry is "whether a state law that prohibits the *actions taken by the trust* is preempted by federal law." (Op. at 5-6 (emphasis in original).) Nevertheless, the court found "that ANCSA implicitly preempts state law [Alaska Stat. § 10.06.305(b)] in this respect." (*Id.* at 6.)

The Ninth Circuit focused on the intent of Congress and looked to "the provisions of the whole law, and to its object and policy," *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 98 (1992) (*quoting Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 51 (1987)). (*See* Op. at 6-8.) The Court conducted an "exercise in statutory construction," *New York State Conference of Blue Cross*, 115 S. Ct. at 1677, and consulted the legislative history of the settlement trust option. (*See* Op. at 9-11.) Relying on *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 605 (1991), the court determined that Alaska Stat. § 10.06.305(b) is implicitly preempted because it stands as an obstruction to the "accomplishment and execution of the full purposes and objectives of Congress." (Op. at 6-7 (*quoting Hines v. Davidowitz*, 312 U.S. at 67-68).) This holding is consistent with *Barnett Bank*, 116 S. Ct. at 1108, and *Gade*, 505 U.S. at 98 (reconfirming "at least" two types of implied preemption, including conflict preemption where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress").

B. The Ninth Circuit's Interpretation of ANCSA Is Correct; the Trust Is a Valid Use of the Settlement Trust Option.

Contrary to the petitioners' suggestion that the settlement

(Cont'd)

> *to the extent that such laws are inconsistent with this section and section 1629b of this title*).

43 U.S.C. § 1629e(a)(1)(A) (emphasis added).

trust option, and ANCSA as a whole, is silent regarding preemption of Alaska Stat. § 10.06.305(b), (Petition at 10), the congressional findings and statement of policy, the language of the statute, and the legislative history of the 1987 amendments all sustain the Ninth Circuit's conclusion.

ANCSA and the ANCSA Amendments of 1987 were enacted by Congress as "Indian legislation" . . . "pursuant to its plenary authority under the constitution of the United States to regulate Indian affairs." Pub. L. No. 100-241, § 2(9), 101 Stat. 1788 (1988); 43 U.S.C. § 1601 note (Supp. 1996) (Congressional Findings and Declaration of Policy for ANCSA Amendments of 1987). *See also Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978). Thus, to the extent any state law conflicts with ANCSA, it is preempted.

In enacting the 1987 Amendments, Congress found:

> Natives have differing opinions as to whether the Native Corporation, as originally structured by the Alaska Native Claims Settlement Act [this chapter], is well adapted to the reality of life in Native villages and to the continuation of traditional Native cultural values[.]

Pub. L. No. 100-241, § 2(4).

The 1987 amendments intended "to ensure the continued success of the settlement and to guarantee Natives continued participation in decisions affecting their rights and property," and "to enable the shareholders of each Native Corporation to structure the further implementation of the settlement in light of their particular circumstances and needs." *Id.* § 2(5). Finally, "by granting the shareholders . . . options to structure the further

implementation of the settlement," Congress expressly declined to state an opinion "on the manner in which such shareholders choose to balance individual rights and communal rights." *Id.* § 2(7).

Thus, the codified settlement trust statute provided that "the purpose of a Settlement Trust shall be to promote the health, education, and welfare of its beneficiaries and preserve the heritage and culture of Natives." 43 U.S.C. § 1629e(b)(1). Section 1629e specifically prohibits only trusts "that discriminate in favor of a group of individuals comprised only or principally of employees, officers or directors of the settlor Native Corporation." 43 U.S.C. § 1629e(b)(1)(C). ANCSA's "plain language . . . prohibits settlement trusts that discriminate in favor of corporate insiders, but does not otherwise prohibit trusts that discriminate in favor of other groups of shareholders." (Op. at 6.) Alaska Stat. § 10.06.305(b), prohibiting discrimination among corporate shareholders, would surely obstruct this broadly stated autonomy of each Native corporation to identify its particular needs and frame a settlement trust to address those needs. "Discrimination" in favor of identified groups of shareholders whose needs were deemed greater is exactly what was intended for the settlement trusts.

While the Ninth Circuit did not phrase its holding in terms of "field preemption,"[6] the purpose clause of the settlement trust provisions is indicative of complete federal occupation of the field to delimit permissible goals of settlement trusts. Surely Congress was aware of the potency in the authority to "promote the health, education and *general welfare*" that it bestowed on the settlement trusts. 43 U.S.C. § 1629e(b)(1)(C) (emphasis

6. Perhaps the Ninth Circuit did not view it necessary to affix a label since, as this Court has observed, the categories of preemption are not "rigidly distinct," and field preemption "may be understood as a species of conflict preemption." *English*, 496 U.S. at 79 n.5.

added). Indeed Congress explained: "Subsection (b)(1) [of 43 U.S.C. § 1629e] establishes certain characteristics of the Settlement Trust. By doing so, Congress expressly intends to preempt State law with regard to these elements of Settlement Trusts." House Explanatory Statement, 133 Cong. Rec. H. 11933 (Dec. 21, 1987), *reprinted in* 1987 U.S.C.C.A.N. 3299, 3308.[7] An analogy is inescapable to the broad construction given by this Court to the "general welfare" spending clause in our own Constitution. U.S. Const. art. I, § 8, cl. 1.

> Governmental decisions to spend money to improve the general public welfare in one way and not another are "not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment."

Mathews v. De Castro, 429 U.S. 181, 185 (1976) (*quoting Helvering v. Davis*, 301 U.S. 619, 640 (1937)).

Contrary to the viewpoint of the dissent, (Op. at 24-25, Kleinfeld, J., dissenting), the general welfare standard "is not a toothless one." *DeCastro*, 429 U.S. at 185 (*quoting Mathews v. Lucas*, 427 U.S. 495, 510 (1976)). But the challenged Trust, established in accordance with the procedure prescribed by ANCSA, would be entitled to a presumption of validity: "So long as [the shareholders'] judgments are rational, and not invidious, the [shareholders' and Trust's] efforts to tackle the problems of the poor and the needy are not subject to a [statutory] straitjacket." *Id.* at 185 (*quoting Jefferson v. Hackney*, 406 U.S. 535, 546 (1972)). The statute's specific prohibition against

---

7. Congress also explained that "conventional trust oversight functions" would remain within the jurisdiction of the state courts. *Id.* at 3309.

benefitting corporate insiders and the requirement of approval by a majority of all voting shareholders, 43 U.S.C. §§ 1629b(d)(A), 1629e(b)(1)(C), provide further protections.

The legislative history of the 1987 amendments supports this expansive interpretation of the purpose of the settlement trusts, and demonstrates that the Trust conforms to ANCSA. Congress enacted the 1987 Amendments to address problems inherent in the 1971 act.[8] Pub. L. No. 100-241, § 2, 101 Stat. 1788 (1988). The most urgent problem was the original act's stock alienation section. *See* 43 U.S.C. § 1606. The act restricted the alienation of ANCSA stock until 1991, when the stock would have become freely alienable. As 1991 drew closer, many Native leaders were apprehensive that ANCSA stock would be relinquished in a corporate takeover and the land belonging to the corporations would leave Native hands. *See* remarks of Congressman Don Young in 133 Cong. Rec. H. 11933 (Dec. 21, 1987).

Native leaders told Congress of their desire to change ANCSA to allow corporations more flexibility in implementing the act. This goal took shape as several identifiable objectives. One objective was to allow corporations to transfer land from the corporation to another entity in order to remove the land from the business risks that jeopardize corporate assets. Another was to create an entity dedicated to providing broad welfare benefits to Natives without the obstacles inherent in paying dividends to shareholders:

> The legislation would allow differential benefits from the corporations for Native

---

8. For a summary of the legislative evolution of the settlement trust option provisions, *see* Martha Hirschfield, *The Alaska Native Claims Settlement Act: Tribal Sovereignty and the Corporate Form*, 101 Yale L.J. 1331, 1343 (1992).

> elders and other classes of Natives who deserve more from the settlement than the rest of us.

To Amend The Alaska Native Claims Settlement Act: Hearings on S. 2065 Before the Subcomm. on Public Lands, Reserved Water and Resource Conservation of the Senate Comm. on Energy and Natural Resources, 99th Cong., 2nd Sess., 101 (1986) (statement of William C. ("Spud") Williams, President, Tanana Chiefs Conference, Inc.).

The petitioners argued below that Congress created the settlement trust option for one exclusive purpose: land protection. The legislative history, however, belies this constricted view. Congress contemplated, and the Ninth Circuit found, a broader role, including use of settlement trust assets "to bolster the economic well-being of the beneficiaries." *House Explanatory Statement*, 133 Cong. Rec. H. 11933 (Dec. 21, 1987), *reprinted in* 1987 U.S.C.C.A.N. 3299, 3308. The following excerpts from the official Senate report demonstrate two goals for the settlement trusts:

> The Settlement Trust section is intended to enable Native Corporations to convey assets to Settlement Trusts in which the assets may be better managed for the benefit of the Alaska Natives.
>
> . . . *Settlement Trusts are expected to serve two principle functions.* They are intended to be permanent, Native-oriented institutions which shall hold and manage, in perpetuity, any historic or culturally significant surface lands, sites, cemeteries, traditional use areas, or monuments, for the benefit of the beneficiary population. . . .

> *The other prime function relates to the health, education and economic welfare of its beneficiaries.* Trusts may receive conveyances of securities, cash, or other assets which it must manage prudently, and passively, in the interests of its beneficiaries, and in conformance with the terms and conditions set forth in the trust instrument and this Act. . . . *[T]he Trust assets may be used to bolster the economic well-being of the beneficiaries. . . .*

Id. at 3307-08 (emphasis added).

This legislative history directly refutes the petitioners' assertion that Congress' sole purpose for the settlement trust option was to protect Native land. Sealaska's use of a settlement trust to benefit elders conforms with the purpose of the 1987 amendments.[9]

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9. The legislative history of 43 U.S.C. § 1606(g) also supports the view that settlement trusts were not created solely to protect Native land:

> In addition, in recognition of the unique environment in which the Native Corporations operate, the subparagraph authorizes such *stock*, if so provided by the authorizing amendment to the articles of incorporation, to carry certain transfer restrictions or to be canceled upon the death of the original holder, *to be restricted in its issuance* to Natives aged 65 or older similarly identifiable groups of Natives, or *to State-Chartered Settlement Trusts established for the benefit of Natives or descendants of Natives, including identifiable groups thereof.*

Senate Rep. No. 201, 100th Cong., 2d Sess. 24, *reprinted in* 1987 U.S.C.C.A.N. 3269, 3276-77 (emphasis added).

Congress declared that one purpose of the 1987 amendments was "to enable the shareholders of each Native corporation to structure the further implementation of the settlement in light of their particular circumstances and needs." Pub. L. No. 100-241, § 2(5), 101 Stat. 1788 (1988). With respect to settlement trusts, Congress clearly intended to give ANCSA corporations more flexibility in implementing the broad goals of the 1971 act, including alternatives theretofore not generally available to corporations:

> While setting forth Settlement Trust characteristics, *Congress intentionally left discretion in the Native Corporations to formulate and state the terms and conditions governing the Trust* through the trust instrument, consistent with the provisions of this Act and State law. Specifically, the settlor Native corporation shall have the authority to set forth the terms and conditions contained in the trust instrument, *including but not limited to . . . distributions . . .*

133 Cong. Rec. H. 11933 (Dec. 21, 1987), *reprinted in* 1987 U.S.C.C.A.N. 3299, 3308-09 (emphasis added).

The petitioners' interpretation would prevent ANCSA corporations from taking advantage of the increased flexibility available through a settlement trust, giving § 1629e a meaning directly contrary to the purpose of the 1987 amendments.

CONCLUSION

The petitioners have not shown the "compelling reasons" required by United States Supreme Court Rule 10 for a grant of certiorari. Their petition for a writ of certiorari should be denied.

Respectfully submitted,

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LESLIE LONGENBAUGH
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APPENDIX A — RELEVANT STATUTES, ACT OF FEBRUARY 3, 1988, PUB.L. 100-241, §§ 2, 101 STAT. 1813, 43 U.S.C. §§ 1606(h)(1)(A), 1629b(a), 1629e, Alaska Stat. §§ 10.06.305(b), 10.06.960(f)

Federal Statutes

Congressional Findings and Declaration of Policy for Alaska Native Claims Settlement Act Amendments of 1987

Pub.L. 100-241, § 2, Feb. 3, 1988, 101 Stat. 1788, provided that:

> "The Congress finds and declares that —
>
> "(1) the Alaska Native Claims Settlement Act [this chapter] was enacted in 1971 to achieve a fair and just settlement of all aboriginal land and hunting and fishing claims by Natives and Native groups of Alaska with maximum participation by Natives in decisions affecting their rights and property;
>
> "(2) the settlement enables Natives to participate in the subsequent expansion of Alaska's economy, encouraged efforts to address serious health and welfare problems in Native villages, and sparked a resurgence of interest in the cultural heritage of the Native peoples of Alaska;
>
> "(3) despite these achievements and Congress's desire that the settlement be accomplished rapidly without litigation and

in conformity with the real economic and social needs of natives, the complexity of the land conveyance process and frequent and costly litigation have delayed implementation of the settlement and diminished its value;

"(4) Natives have differing opinions as to whether the Native Corporation, as originally structured by the Alaska Native Claims Settlement Act [this chapter], is well adapted to the reality of life in Native villages and to the continuation of traditional Native cultural values;

"(5) to ensure the continued success of the settlement and to guarantee Natives continued participation in decisions affecting their rights and property, the Alaska Natives Claims Settlement Act [this chapter], must be amended to enable the shareholders of each Native Corporation to structure the further implementation of the settlement in light of their particular circumstances and needs;

"(6) among other things, the shareholders of each Native Corporation must be permitted to decide —

"(A) when restrictions on alienation of stock issued as part of the settlement should be terminated, and

"(B) whether Natives born after December 18, 1971, should participate in the settlement;

"(7) by granting the shareholders of each Native Corporation options to structure the further implementation of the settlement, Congress is not expressing an opinion on the manner in which such shareholders choose to balance individual rights and communal rights;

"(8) no provision of this Act [see Short title of 1988 Amendment note under this section] shall —

"(A) unless specifically provided, constitute a repeal or modification, implied or otherwise, of any provision of the Alaska Native Claims Settlement Act [this chapter]; or

"(B) confer on, or deny to, any Native organization any degree of sovereign governmental authority over lands (including management, or regulation of the taking, of fish and wildlife) or persons in Alaska; and

"(9) the Alaska Native Claims Settlement Act [this chapter] and this Act [see Short Title of 1988 Amendment note under this section] are Indian legislation enacted

by Congress pursuant to its plenary authority under the constitution of the United States to regulate Indian affairs."

43 U.S.C. § 1606. Regional Corporations

(h) Settlement Common Stock

(1) Rights and restrictions

(A) Except as otherwise expressly provided in this chapter, Settlement Common Stock of a Regional Corporation shall —

(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to shareholders;

(ii) permit the holder to receive dividends or other distributions from the corporation; and

(iii) vest in the holder all rights of a shareholder in a business corporation organized under the laws of the State.

43 U.S.C. § 1629b. Procedures for considering amendments and resolutions

(a) Coverage

Notwithstanding any provision of the articles of

incorporation and bylaws of a Native Corporation or of the laws of the State, except those related to proxy statements and solicitations that are not inconsistent with this section —

> (1) an amendment to the articles of incorporation of a Native Corporation authorized by subsections (g) and (h) of section 1606 of this title, subsection (d)(1)(B) of this section, or section 1629c of this title;
>
> (2) a resolution authorized by section 1629(d)(2) of this title
>
> (3) a resolution to establish a Settlement Trust; or
>
> (4) a resolution to convey all or substantially all of the assets of a Native Corporation to a Settlement Trust pursuant to section 1629e(a)(1) of this title;

shall be considered in accordance with the provisions of this section.

43 U.S.C. § 1629e. Settlement Trust Option

(a) Conveyance of corporate assets.

> (1)(A) A Native Corporation may convey assets (including stock or beneficial interests therein) to a Settlement Trust in accordance with the laws of the State (except to the extent that such laws are inconsistent with this section and section 36 [43 USCS § 1629b]).

(B) The approval of the shareholders of the corporation in the form of a resolution shall be required to convey all or substantially all of the assets of the corporation to a Settlement Trust. A conveyance in violation of this clause shall be void ab initio and shall not be given effect by any court.

(2) No subsurface estate in land shall be conveyed to a Settlement Trust. A conveyance of title to, or any other interest in, subsurface estate in violation of this subparagraph shall be void ab initio and shall not be given effect by any court.

(3) Conveyances made pursuant to this subsection —

(A) shall be subject to applicable laws respecting fraudulent conveyance and creditors rights; and

(B) shall give rise to dissenters rights to the extent provided under the laws of the State only if the rights of beneficiaries in the Settlement Trust receiving a conveyance are inalienable.

(4) The provisions of this subsection shall not prohibit a Native Corporation from engaging in any conveyance, reorganization, or transaction not otherwise prohibited under the laws of the State or the United States.

Appendix A

(b) Authority and limitations of a Settlement Trust.

(1) The purpose of a Settlement Trust shall be to promote the health, education, and welfare of its beneficiaries and preserve the heritage and culture of Natives. A Settlement Trust shall not —

(A) operate as a business;

(B) alienate land or any interest in land received from the settlor Native Corporation (except if the recipient of the land is the settlor corporation); or

(C) discriminate in favor of a group of individuals composed only or principally of employees, officers, or directors of the settlor Native Corporation.

An alienation of land or an interest in land in violation of this paragraph shall be void ab initio and shall not be given effect by any court.

(2) A Native Corporation that has established a Settlement Trust shall have exclusive authority to —

(A) appoint the trustees of the trust, and

(B) remove the trustees of the trust for cause.

Appendix A

Only a natural person shall be appointed a trustee of a Settlement Trust. An appointment or removal of a trustee in violation of this paragraph shall be void ab initio and shall not be given effect by any court.

(3) A Native Corporation that has established a Settlement Trust may expand the class of beneficiaries to include holders of Settlement Common Stock issued after the establishment of the trust without compensation to the original beneficiaries.

(4) A Settlement Trust shall not be held to violate any laws against perpetuities.

(c) Savings.

(1) The provisions of this Act [43 USCS §§ 1601 et seq.] shall continue to apply to any land or interest in land received from the Federal Government pursuant to this Act [43 USCS §§ 1601 et seq.] and later conveyed to a Settlement Trust as if the land or interest in land were still held by the Native Corporation that conveyed the land or interest in land.

(2) No timber resources subject to section 7(i) conveyed to a Settlement Trust shall be sold, exchanged, or otherwise conveyed except as necessary to —

(A) dispose of diseased or dying timber or to prevent the spread of disease or insect infestation;

(B) prevent or suppress fire; or

(C) ensure public safety. The revenue, if any, from such timber harvests shall be subject to section 7(i) as if such conveyance had not occurred.

(3) The conveyance of assets (including stock or beneficial interests) pursuant to subsection (a) shall not affect the applicability or enforcement (including specific performance) of a valid contract, judgment, lien, or other obligation (including an obligation arising under section 7(i)) to which such assets, stock, or beneficial interests were subject immediately prior to such conveyance.

(4) A claim based upon paragraph (1), (2), or (3) shall be enforceable against the transferee Settlement Trust holding the land, interest in land, or other assets (including stock or beneficial interests) in question to the same extent as such claim would have been enforceable against the transferor Native Corporation, and valid obligations arising under section 7(i) as well as claims with respect to a conveyance in violation of a valid contract, judgment, lien, or other

obligation shall also be enforceable against the transferor corporation.

(5) Except as provided in paragraphs (1), (2), (3), and (4), once a Native Corporation has made, pursuant to subsection (a), a conveyance to a Settlement Trust that does not —

(A) render it —

(i) unable to satisfy claims based upon paragraph (1), (2), or (3); or

(ii) insolvent; or

(B) occur when the Native Corporation is insolvent; the assets so conveyed to the Settlement Trust shall not be subject to attachment, distraint, or sale on execution of judgment or other process or order of any court, except with respect to the lawful debts or obligations of the Settlement Trust.

(6) No transferee Settlement Trust shall make a distribution or conveyance of assets (including cash, stock, or beneficial interests) that would render it unable to satisfy a claim made pursuant to paragraph (1), (2), or (3). A distribution or conveyance made in violation of this paragraph shall be void ab initio and shall not be given effect by any court.

(7) Except where otherwise expressly provided, no provision of this section shall be construed to require shareholder approval of an action where shareholder approval would not be required under the laws of the State.

Alaska Statutes

Alaska Stat. § 10.006.305(b)

(b) All shares of a class shall have the same voting, conversion, and redemption rights and other rights, preferences, privileges, and restrictions, unless the class is divided into series. If a class is divided into series, all the shares of a series shall have the same voting, conversion, and redemption rights and other rights, preferences, privileges, and restrictions.

Alaska Stat. § 10.06.960(f)

Notwithstanding the other provisions of this chapter, a corporation organized under the act is governed by the act to the extent the act is inconsistent with this chapter, and the corporation may take any action, including amendment of its articles, authorized by the act, and the action is considered to be approved and adopted if approved under the act. An amendment approved under the act and delivered to the commissioner under AS 10.06.512 shall be filed by the commissioner under AS 10.06.910, and a certificate of amendment shall be issued.

APPENDIX B — VERIFIED NOTICE OF REMOVAL FILED OCTOBER 28, 1992 WITH ATTACHED SUMMONS AND COMPLAINT

E. Budd Simpson
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One Sealaska Plaza, Suite 301
Juneau, Alaska 99801
(907) 586-2890

Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. K92-006 CIV

LAURIE ISAAC BROAD,

For Himself and All Others Who Are Similarly Situated,

Plaintiffs,

vs.

SEALASKA CORPORATION, THE SEALASKA ELDERS' SETTLEMENT TRUST, and Patrick Anderson, Charles Carlson, Joseph Demmert, Jr., L. Embert Demmert, Raymond Demmert, Jim Edenso, Clarence Jackson, Sr., Marlene A. Johnson, Albert Kookesh, Ethel Lund, Carlton Smith, Richard Stitt, Sr., Ralph Strong, Alan Williams, Rosita Worl, and Marjorie Young (Corporate Directors),

Defendants.

Appendix B

VERIFIED NOTICE OF REMOVAL

The Defendants respectfully submit this Verified Notice of Removal pursuant to 28 U.S.C. §§ 1441(a) and (b) and 1331. This case presents issues under federal law for which the district courts of the United States have original jurisdiction.

I. BACKGROUND

1. On September 30, 1992, plaintiff filed a Complaint in the Superior Court for the State of Alaska, First Judicial District of Petersburg. The complaint was docketed by the Clerk of the Superior Court, assigned Case No. 1PE-92-132CI, and is now pending therein. A true and correct copy of the summons and complaint is attached hereto as required by 28 U.S.C. § 1446(a).

2. The state court action arises under the Alaska Native Claims Settlement Act ("ANCSA"), codified at 43 U.S.C. §§ 1601-1629e (1992), and Alaska Rule of Civil Procedure 23. Specifically, plaintiff alleges that the Sealaska Elders' Settlement Trust, established by Sealaska Corporation under 43 U.S.C. § 1629e, unfairly discriminates against those Sealaska shareholders who have not received benefits under the Trust. Complaint at ¶ 7. Plaintiff seeks, *inter alia*, a declaration that the Trust is discriminatory. Complaint at ¶ B.

3. On or around October 2, 1992, the summons and complaint were served on defendant Sealaska Corporation. Accordingly, this notice is filed within 30 days of receipt by defendant Sealaska Corporation of service.

4. No proceedings have been held in the state court action except the *pro forma* issuance of a case number with the filing of the complaint.

5. The Defendants seek removal of the state court action to the United States District Court of Alaska.

II. THE DISTRICT COURT HAS ORIGINAL JURISDICTION OVER THE STATE COURT ACTION

6. The district court has original jurisdiction over this state court action, and the action is removable pursuant to 28 U.S.C. §§ 1441(a) and (b).

7. Original jurisdiction exists because the action arises under the laws of the United States. *See* 28 U.S.C. § 1331. Plaintiff's claim for relief arises under federal law: 43 U.S.C. § 1629e(b).

CONCLUSION

WHEREFORE, the Defendants ask that the state court action be removed from the Superior Court for the State of Alaska, First Judicial District at Petersburg to the United States District Court of Alaska.

DATED this 27 day of October, 1992.

BIRCH, HORTON, BITTNER & CHEROT
Attorneys for the Defendants

By: s/ E. Budd Simpson
E. Budd Simpson

Appendix B

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT PETERSBURG

Case No. 1PE-92-132CI

LAURIE ISAAC BROAD

For Himself and All Others Who Are Similarly Situated

Plaintiffs

vs.

SEALASKA CORPORATION, THE SEALASKA ELDER'S SETTLEMENT TRUST, and Patrick Anderson, Charles Carlson, Joseph Demmert, Jr., L. Embert Demmert, Raymond Demmert, Jim Edenso, Clarence Jackson, Sr., Marlene A. Johnson, Albert Kookesh, Ethel Lund, Carlton Smith, Richard Stitt, Sr., Ralph Strong, Alan Williams, Rosita Worl, and Marjorie Young (Corporate Directors)

Defendants

SUMMONS

To: SEALASKA CORPORATION

c/o Registered Agent
Birch, Horton, Bittner & Monroe
One Sealaska Plaza
Juneau, Alaska 99801

You are hereby summoned and required to serve upon:

Appendix B

Fred W. Triem
Box 129
Petersburg, Alaska 99833
(907) 772-3911

an answer to the Complaint which is herewith served upon you; and you must do so within twenty (20) days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

s/ Darlene A. Whitethorn
Darlene A. Whitethorn
Magistrate

Petersburg, Alaska

ATTACHMENT: Complaint for Class Action of 30 September 1992

Appendix B

[Stamped]
Filed in Trial Courts
State of Alaska, First District
at Petersburg

SEP 30 1992

By s/ dw

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT PETERSBURG

Case No. 1PE-92-132CI

LAURIE ISAAC BROAD

For Himself and All Others Who Are Similarly Situated

Plaintiffs

vs.

SEALASKA CORPORATION, SEALASKA ELDER'S SETTLEMENT TRUST, and Patrick Anderson, Charles Carlson, Joseph Demmert, Jr., L. Embert Demmert, Raymond Demmert, Jim Edenso, Clarence Jackson, Sr., Marlene A. Johnson, Albert Kookesh, Ethel Lund, Carlton Smith, Richard Stitt, Sr., Ralph Strong, Alan Williams, Rosita Worl, and Marjorie Young

Defendants

COMPLAINT FOR CLASS ACTION

Comes now into court Laurie Isaac Broad, for himself and

for all other members of the class hereinafter described, who are plaintiffs in the above-captioned cause, by and through his attorney, Fred W. Triem, of Box 129, Petersburg, Alaska, and proceeding according to Alaska Civil Rule 23, and for their cause of action allege and aver as follows:

(1) Plaintiff is a resident of the State of Alaska and is domiciled in Wrangell, Alaska.

(2) Defendants are Sealaska Corporation, the Sealaska Elders' Settlement Trust, and the Board of Directors of Sealaska. Sealaska Corporation is an Alaska corporation organized under Section 7 of the Alaska Native Claims Settlement Act [43 U.S.C. § 1606] as a Regional Corporation, having its principal office in the City of Juneau, Alaska, within the First Judicial District, for the purpose of securing and administering the benefits of the Settlement Act for its shareholders.

(3) This action is brought by plaintiff as a class action, on his own behalf and on the behalf of all others similarly situated, under the provisions of Alaska Civil Rule 23 for injunctive and declaratory relief, for restitution, for damages, and for relief incident and subordinate thereto, including pre-judgment interest, costs and attorneys' fees.

(4) The Class so represented by the plaintiff in this action and of which plaintiff is himself a member, consists of all shareholders of Sealaska Corporation who have not been enrolled as beneficiaries in the Elders' Settlement Trust [hereinafter "EST"] during the period from November 1991 to present or who have not been paid the special dividend.

(5) The exact number of members of the Class, as identified

and described hereinabove, is not known; but it is estimated that there are approximately 14,000 members. The Class is so numerous that joinder of individual members herein is impracticable.

(6) There is a common question of fact and law in the action that relates to and affects the rights of each member of the Class.

(7) The claims advanced and the relief sought are common to the entire Class, namely, on or about November 1991, Sealaska Corporation established the Sealaska Elders' Settlement Trust [hereinafter: EST]. The EST confers a special benefit upon certain privileged shareholders in the form of an extra dividend of $20 per share paid for by the corporation. This benefit is conferred upon only those shareholders who are of the age of 65 years or older. Because the named plaintiff is not yet of the age of 65 years, he can receive nothing from the EST — even though he holds the same class of stock as other shareholders who do receive this extraordinary benefit. The EST unfairly discriminates against the named plaintiff and the Class because it is supported and paid for by an expenditure of corporate assets that would otherwise be available for *pro rata* distribution to *all* the shareholders of the corporation including the plaintiffs. Therefore, the benefits of the EST are a constructive dividend, the restricted and limited distribution of which discriminates against those shareholders of the same class of stock who do not receive this dividend.

(8) The claim of the plaintiff, who is a representative of the Class herein, is typical of the claims of the Class, in that the claims of all members of the Class, including the claim of the plaintiff, depend on the showing of the acts of omissions of the defendants giving rise to the right of the plaintiffs to the relief sought herein.

(9) The named plaintiff is the representative party for the Class, and is able to, and will, fairly and adequately protect the interests of the Class. The plaintiff's attorney has sufficient experience and knowledge to conduct this litigation on behalf of the plaintiff and the putative Class.

(10) There is no conflict between the nominal plaintiff and the other members of the Class with respect to this action or with respect to the claims for relief herein set forth.

WHEREFORE the plaintiff prays, for himself and for all other members of the Class, the following relief:

(A) That the court determine this action is properly maintained as a Class action pursuant to Civil Rule 23; and

(B) That the court declare the benefits of the EST to be a constructive dividend, the past and present distribution of which discriminates against the members of the Class; and

(C) That the court enjoin the defendants from continuing the Elders' Settlement Trust; or

(D) That the court enjoin the defendants to enroll the plaintiffs in the EST; and

(E) That the court enjoin the defendants from paying any dividend and from making any distribution to any shareholder who is not a member of the Class until all members of the Class have been fully compensated for their claims herein; and

(F) That the court award restitution and damages to the plaintiff and to the Class for their *pro rata* share of the corporate assets that have been expended on the EST; and

(G) That the court award pre-judgment interest to the plaintiff and to The Class; and

(H) That the defendant be required to pay the plaintiff's court costs and attorney's fees that are incurred in this action, and post-judgment interest; and

(I) That the court award such further and additional relief as may seem to the court just and proper under the circumstances, including costs and expenses.

Respectfully submitted this 30th day of September 1992 at Petersburg, Alaska.

s/ Fred W. Triem
Fred W. Triem
Attorney for plaintiffs

APPENDIX C — AMENDED COMPLAINT FILED OCTOBER 30, 1992

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA, FIRST JUDICIAL DISTRICT AT PETERSBURG

Case No. 1PE-92-132CI

LAURIE ISAAC BROAD, MARSHA SIMONDS, JULIE WIGG, JOYCE LEWIS, CLINTON LEWIS, LARRY TAYLOR, JR., MARC SIMPSON, REBECCA SIMPSON, ALORA J. WINCHESTER, EMILY GOTARDO, BARBARA CRABTREE, ANGIE DOAK, ROYANN CHURCHILL, LEONARD VALEZQUEZ, ARLENE BELL HANSON and VICTOR CARL DAVIS, JR.

For themselves and All Others Who Are Similarly Situated

Plaintiffs

vs.

SEALASKA CORPORATION, SEALASKA ELDER'S SETTLEMENT TRUST, and Patrick Anderson, Charles Carlson, Joseph Demmert, Jr., L. Embert Demmert, Raymond Demmert, Jim Edenso, Clarence Jackson, Sr., Marlene A. Johnson, Sr., Albert Kookesh, Ethel Lund, Carlton Smith, Richard Stitt, Sr., Ralph Strong, Alan Williams, Rosita Worl, and Marjorie Young (DIRECTORS)

Defendants

Appendix C

AMENDED COMPLAINT FOR CLASS ACTION

Come now into court Laurie Isaac Broad and his co-plaintiffs, for themselves and for all other members of the Class hereinafter described, who are the plaintiffs in the above-captioned cause, by and through their attorney, Fred W. Triem, of Box 129, Petersburg, Alaska, proceeding according to Alaska Civil Rule 23, and for their cause of action allege and aver as follows:

(1) Plaintiffs are residents of the State of Alaska and are domiciled in Petersburg or in Wrangell, Alaska.

(2) All of the plaintiffs named above are shareholders of Sealaska Corporation.

(3) Defendants are Sealaska Corporation, the Sealaska Elder's Settlement Trust, and the individual members of the Board of Directors of Sealaska Corporation (some of whom are also trustees of the Sealaska Elders' Settlement Trust).

(4) Sealaska Corporation is an Alaska corporation organized under Section 7 of the Alaska Native Claims Settlement Act [43 U.S.C. §1606] as a Regional Corporation, having its principal office in Juneau, Alaska, within the First Judicial District, for the purpose of securing the administering the benefits of the Settlement Act for its shareholders.

(5) The Sealaska Elders' Settlement Trust is a trust established by, funded by, and registered by Sealaska Corporation on 10 December 1991 pursuant to AS 13.16.005-.300 in Case No. 1JU-91-11TR in the Superior Court in Juneau, Alaska.

Appendix C

(6) This action is brought by the plaintiffs as a class action, on their own behalf and on the behalf of all others similarly situated, under the provisions of Alaska Civil Rule 23 for injunctive and declaratory relief, for restitution, for damages, and for relief incident and subordinate thereto, including pre-judgment interest, costs, and attorneys' fees.

(7) The Class so represented by the plaintiffs in this action and of which plaintiffs are themselves members, consists of all shareholders of Sealaska Corporation who have not been enrolled as beneficiaries in the Elders' Settlement Trust [hereinafter "EST"] during the period from November 1991 to present or who have not been paid the special dividend of $20 per share that has been and is being distributed only to those shareholders who are the beneficiaries of the EST.

(8) The exact number of members of the Class, as identified and described hereinabove, is not known; but it is estimated that there are approximately 14,465 members in the Class. The Class is so numerous that joinder of individual members herein is impracticable.

(9) There is a common question of fact and law in the action that relates to and affects the rights of each member of the Class.

(10) The claims being made by the plaintiffs are typical of the claims of the Class. (In fact, the claims of the plaintiffs are *identical* with those of the Class).

(11) The representative parties, who are the nominal plaintiffs herein, are adequate to represent the Class and do not have any conflicts with the other members of the Class with

respect to this action or with respect to the claims for relief herein set forth. The named plaintiffs are the representative party for the Class, and are about to, and will, fairly and adequately protect the interests of the Class. The plaintiffs' attorney has sufficient experience and knowledge to conduct this litigation on behalf of the plaintiffs and the putative Class.

(12) The claims advanced and the relief sought are common to the entire Class, namely: on or about December 1991, Sealaska Corporation established the Sealaska Elders' Settlement Trust [hereinafter: EST]. The EST confers a special benefit upon certain privileged shareholders in the form of an extra dividend or distribution of $20 per share paid for by the corporation. This benefit is conferred upon only those shareholders who are of the age of 65 years or older. Because the named plaintiffs are not yet of the age of 65 years, they can receive nothing from the EST — even though they hold the same class of stock as the other shareholders who do receive this extraordinary distribution. The EST unfairly discriminates against the named plaintiffs and against the Class because it is supported and paid for by an expenditure of corporate assets that would otherwise be available for *pro rata* distribution to *all* the shareholders of the corporation including the plaintiffs and the members of the Class. Therefore, the benefits of the EST are a constructive dividend, the restricted and limited distribution of which discriminates against those shareholders of the same class of stock who do not receive this dividend.

WHEREFORE the plaintiffs pray, for themselves and for all the other members of the Class, the following relief:

(A) That the court determine this action to be properly maintained as a Class action pursuant to Civil Rule 23; and

(B) That the court declare the benefits of the EST to be a constructive dividend, the past and present distribution of which discriminates against the members of the Class; and

(C) That the court enjoin the defendants from continuing the Elders' Settlement Trust; or

(D) That the court enjoin the defendants to enroll the plaintiffs and the members of the Class in the EST; and

(E) That the court enjoin the defendants from paying any dividend and from making any distribution to any shareholder who is not a member of the Class until all members of the Class have been fully compensated for their claims herein; and

(F) That the court award restitution and damages to the plaintiff and to the Class for their *pro rata* share of the corporate assets that have been expended on the EST; and

(G) That the court award pre-judgment interest to the plaintiffs and to The Class; and

(H) That the defendant be required to pay the plaintiffs' court costs and attorney's fees that are incurred in this action, and post-judgment interest; and

(I) That the court award such further and additional relief as may seem to the court just and proper under the circumstances, including costs and expenses.

Respectfully submitted this 30th day of October 1992 at Petersburg, Alaska.

Appendix C

s/ Fred W. Triem
Fred W. Triem
Attorney for plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of October in 1992, I mailed a true and correct copy of the foregoing pleading to Leslie Longenbaugh, Esq., attorney for the defendants, Sealaska Corporation, et. al.

s/ Fred W. Triem
Fred W. Triem